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Letter dated 30 April 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 3 November 2003 (S/2003/1060). The Counter-Terrorism Committee has received the attached third report from the Niger submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: French]

Note verbale dated 27 April 2004 from the Permanent Mission of the Niger to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of the Niger to the United Nations presents its compliments to the Counter-Terrorism Committee established pursuant to Security Council resolution 1373 (2001) and, in response to its note dated 22 October 2003, has the honour to transmit to it herewith the second supplementary report of the Niger on counter-terrorism (see enclosure).

Enclosure*

Supplementary report of the Niger on counter-terrorism

Introduction

This report supplements the previous report submitted to the Counter-Terrorism Committee.

Some questions which could not be addressed in the preceding report will be answered in this report.

They include in particular questions concerning the measures taken by the Government of the Niger with regard to illicit drug trafficking and the hijacking of aircraft.

This supplementary report consists of two parts, dealing with the aforementioned questions.

I. Penalties incurred for drug trafficking and consumption

This matter is covered by Order No. 99-42 of 23 September 1999 concerning the control of illegal drugs in the Niger, which establishes three separate categories:

High-risk drugs

Under this heading there are the following subheadings:

Cultivation, production and manufacture;

International trafficking;

Trafficking;

Facilitating drug use;

Offering or selling for personal use;

Drugs involving risk

Precursors, equipment and material

II. Penalties incurred in the event of the hijacking of aircraft

The penalties incurred also vary following the same distinction:

I. *High-risk drugs* (tables I and II)

A. *Cultivation, production and manufacture*

Under article 94, any person contravening the laws and regulations concerning the export, import and international transport of high-risk drugs is subject to either 10 to 20 years' imprisonment or a fine of 1 million francs, or both.

* Annexes are on file with the Secretariat and are available for consultation.

B. *International trafficking (art. 95)*

Any person contravening the laws and regulations concerning the export, import and international transport of high-risk drugs is subject to either 10 to 20 years' imprisonment or a fine of 1 million to 10 million francs or both.

C. *Trafficking (art. 96)*

Any person contravening the laws and regulations concerning the offering, offering for sale, distribution, brokerage, sale delivery on any terms whatsoever, dispatch, shipping, transport, purchase, possession or use of high-risk drugs is subject to either 10 to 20 years' imprisonment or a fine of 1 million to 20 million francs or both.

D. *Facilitating drug use (art. 97)*

Under article 97, the following persons are subject to either 5 to 10 years' imprisonment or a fine of 500,000 to 1 million francs, or both:

(a) Any person who facilitates the illegal use of high-risk drugs, in return for payment or free of charge, either by providing the premises for that purpose or by any other means. Examples include owner-managers, senior managers and managers of hotels, furnished houses, boarding houses, bars, restaurants, clubs and other establishments;

(b) Any person who knowingly issues prescriptions for high-risk drugs without medical justification;

(c) Any person who fills such prescriptions for high-risk drugs, being aware that the prescriptions are fraudulent or without medical justification;

(d) Any person who obtains or attempts to obtain high-risk drugs through prescriptions which are fraudulent or without medical justification;

(e) Any person who adds high-risk drugs to food or beverages without the consumers' knowledge.

E. *Offering or selling for personal use (art. 98)*

Any person who sells or offers high-risk drugs to another person for their personal use is subject to either 1 to 5 years' imprisonment or a fine of 100,000 to 500,000 francs, or both.

II. *Drugs involving risk (table III) (art. 99)*

Under article 99, any person who contravenes the laws and regulations concerning the cultivation, production, manufacture, extraction, preparation, transformation, importation, exportation, offering, offering for sale, distribution, brokerage, sale, delivery on any terms whatsoever, dispatch, shipping, transport, purchase, possession or use of drugs involving risk is subject to 5 to 10 years' imprisonment or a fine of 1 million to 10 million francs, or both.

III. *Precursors (table IV), equipment and material (art. 100)*

Under article 100, any person who produces, manufactures, imports, exports, transports, offers, sells, distributes, delivers on any terms whatsoever, sends, dispatches, ships, purchases or possesses precursors, equipment and material, either for the purpose of using them for the illegal cultivation, production or manufacture

of high-risk drugs or drugs involving risk or knowing that those precursors, equipment and material would be used for such purposes, is subject to 10 to 20 years' imprisonment or a fine of 1 million to 20 million francs, or both.

It should be noted that:

(1) Direct or indirect incitement to the commission of offences and illegal use of high-risk drugs or substances presented as having the effects of those drugs is punishable by 5 to 10 years' imprisonment or a fine of 500,000 to 5 million francs, or both (art. 102).

However, the prison term incurred shall be 1 to 5 years in the event of incitement to use illegally drugs involving risk or substances presented as having the effects of those drugs.

(2) Attempts to commit the offences referred to in articles 94 and 102 and association or conspiracy to commit such offences are subject to the same penalties as completed offences (art. 103).

(3) Accomplices who knowingly provide the means for, aid and abet, facilitate or counsel the commission of the offences referred to in articles 94 and 102 are subject to the same penalties as the perpetrator of the offence.

(4) Lastly, the penalties provided for in articles 94, 95, 96, 97, 98, 99 and 101 can be imposed even if the various acts constituting the elements of the offence were committed in different countries (art. 106).

1. Concerning the first question, articles 391 and 399 of the Criminal Code of the Niger contain provisions criminalizing the hijacking of aircraft. According to resolution 1373 (2001), paragraph 1 (c), States are to freeze without delay funds and other financial assets or economic resources of persons or entities that commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts, regardless of the source of the funds. These measures have been taken into account by the Government of the Niger in Regulation No. 14/2002/CM/UEMOA on the freezing of funds and other financial resources in the context of combating terrorism in the States of the West African Economic and Monetary Union (ECOWAS).

2. Concerning the legal provisions in force regulating other money transfer agencies or services, the Niger has taken steps to incorporate that aspect of Security Council resolution 1373 (2001) into its national legislation by submitting for adoption by the National Assembly the ECOWAS uniform Act on Money-Laundering, articles 4 and 5 of which (title I, sole chapter) deal with financial institutions.

3. Currently there are no provisions concerning alternative money transfer systems such as *hawala*. However, following the legislative workshop in Tunis organized by the Legal Department of the International Monetary Fund and the United Nations Office on Drugs and Crime, a bill on the suppression of the financing of terrorism is being studied at the ministerial department level and will soon be submitted to the Government for consideration. This bill contains provisions intended to ensure that funds and other resources collected by religious, charitable and cultural organizations are not diverted to purposes other than their stated purpose, in particular the financing of terrorism.

4. Regarding the implementation of subparagraph 2 (a) of resolution 1373 (2001), the Niger has always, in the context of the aforementioned bill, provided for the suppression of recruitment of persons in its territory with a view to joining terrorist groups operating either inside its territory or abroad.

5. The supply of arms to terrorists may be linked to the regulations on trading in and carrying of weapons, offences provided for and punishable under the new articles 298, 299 and 300 of the Criminal Code of the Niger, which address, respectively, the carrying, possession, importation, transfer, sale and transport of arms, explosives or munitions in the territory of the Niger.

6. The Niger intends to incorporate in its domestic legal order, within the framework of the bill on suppression of the financing of terrorism, the provision of Security Council resolution 1373 (2001) calling on States to deny safe haven to those who finance, plan, support or commit acts of terrorism.